

**REPORT - PLANNING COMMISSION MEETING**  
**June 26, 2003**

**Project Name and Number:** Nightclub – Albrae Street (PLN 2003-000271)

**Applicant:** Rick Haynes, Golden Vision Entertainment

**Proposal:** To consider a Major Amendment to P-90-18 to include an adult nightclub as a conditionally allowed use within a developed property located in the Industrial Planning Area.

**Recommended Action:** Recommend to City Council, based on Findings and subject to Conditions of Approval

**Location:** 40539 Albrae Street

**Assessor Parcel Number:** 531-0240-035

**Area:** 16,600 square foot tenant space on a 12.08-acre parcel (a portion of 32.45 acre developed parcel)

**Owner:** Dale Sobek

**Agent of Applicant:** Roger Shanks, Bunton Clifford Associates

**Consultant(s):** Bunton Clifford Associates Architects

**Environmental Review:** This project is categorically exempt from CEQA review under Section 15332, In-Fill Development Projects.

**Existing General Plan:** General Industrial; Commercial Industrial Overlay

**Existing Zoning:** P Planned District (P-90-18)

**Existing Land Use:** Retail furniture stores, Bay Billiards, Demaray's Gymnastics, SAF Keep storage

**Public Hearing Notice:** Public hearing notification is applicable. A total of 264 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Albrae Steet, Cedar Drive and Encyclopedia Circle. The notices to the owners were mailed on June 16, 2003. A Public Hearing Notice was delivered to The Argus on June 11, 2003 to be published by June 16, 2003.

**Executive Summary:** The Planning Commission is being asked to recommend a Planned District Major Amendment to P-90-18 to the City Council (zoning district amendment and use permit). The amendment will allow a nightclub as a conditionally permitted use within the planned district, thereby allowing conditional approval of a nightclub, the "Theme Bar", on developed property located at 40539 Albrae Street. The nightclub is approximately 16,600 square feet in size and is located adjacent to the previous Home Depot (now Furniture Depot), across from Costco, near the corner of Albrae Street and Stevenson Boulevard in the Industrial Planning Area. Staff considers of the proposed project as the second nightclub allowed in the Commercial Industrial Overlay, and recommends approval of the proposed project, based on Findings and subject to Conditions of Approval.

**Background and Previous Actions:** Planned District P-90-18 was approved by the City Council on May 6, 1991 for the development of commercial and industrial uses onsite. Prior to the approval of the Planned District, the property owner requested and received approval for a tentative parcel map (TPM-4553) in 1988, and a General Plan Amendment and EIR (GPA-87-17 and EIR-87-85) in 1987. Subsequent to the Council's approval of the Planned District, there have been

numerous amendments to permit a variety of uses, such as Bay Billiards (PLN2003-00173), not specifically addressed in the original approval. In August of 1995 the property owner received approval for a subsequent tentative parcel map (TPM-6695).

On October 24, 2000, the City Council approved a Major Amendment to Planned District P-90-18 for the construction of 69,250 square feet of retail space, 24,440 square feet of warehouse space and 32,000 square feet of industrial office space. Improvements to existing buildings, parking and landscaping were also approved. The retail buildings are to be located adjacent to Stevenson Boulevard where two points of ingress and egress to Stevenson are available. The warehouse building is to be located between Encyclopedia Circle and an existing building used for warehouse and bulk retail uses, and an industrial office building is to be located in the rear of the site adjacent to Encyclopedia Circle. To date, none of the improvements approved under this Major Amendment have been constructed.

On October 22, 2002 City Council approved a Zoning Text Amendment regarding nightclubs in the Commercial Industrial Overlay shown on the General Plan land use diagram. The zoning text amendment (PLN2002-00317) permitted two nightclubs/dance clubs in the Commercial Industrial Overlay, subject to a conditional use permit and the following additional criteria: the use must be oriented to the regional market; convenient access from freeways is available for the use; and, the proposed use would be compatible with existing industrial uses and would not impede future industrial development. The purpose of the conditional use permit is to allow a proper integration into the community of uses that may only be suitable in specific locations in a zoning district, or only if such uses are designed in a particular manner on the site, or are subject to specific conditions.

**Project Description:** The project site for the proposed "Theme Bar" nightclub is zoned Planned District P-90-18 and is within the Commercial Industrial Overlay as indicated in the General Plan land use diagram. The project site encompasses approximately 12.08 acres of the total 32.45 acres within the planned district on Parcel 4 of Tentative Parcel Map 6695. Because the project site is located within a planned district, the applicant requests: (i) a major amendment to allow one nightclub in Planned District P-90-18 as a conditionally permitted use within this district; and, (ii) a use permit to operate the Theme Bar nightclub (the City requires Conditional Use Permits for all late night uses).

The applicant proposes to operate the Theme Bar in an approximately 16,600 square foot tenant space located within the existing 224,000 square foot building on Parcel 4. Power House Gym previously occupied the tenant space proposed for the Theme Bar. The applicant has divided the Theme Bar nightclub into two areas. Near the main entrance there is proposed an approximately 2,000 square foot lounge area with a bar and seating areas, including private booths under the DJ platform. The second major area of the Theme Bar is the main dance area, which includes a raised performance stage, raised seating platforms along the sides of the dance floor and a bar. The applicant indicates that only performers and club personnel will be allowed to use the performance stage at the center. No customers will be allowed to dance on the raised performance stage. The main dance area is approximately 7,200 square feet in area. According to the applicant, the goal of the Theme Bar is "to bring a more visual aspect back to disco type night clubbing". Accordingly, the goal as stated by the applicant is to provide disco and house music to mainstream customers who want to dance and listen to music.

The concept of the Theme Bar, according to the applicant, is to change the theme of the bar on a monthly basis. According to the applicant's proposal:

"We will change all the costumes, backdrops and matte paintings to match the theme of the month. Three examples are a Disco Month where our staff and crew would dress up in circa 70's attire and dance with our patrons. The entire theme bar would be themed out and decorated in a 70's fashion. We will play music from the era and decorate the bar throughout with disco balls, roller skates, Saturday Night Fever costumes, etc. Month two would be an Egyptian theme; we will be looking for an upscale crowd this month. We would change the entire theme bar into a Egyptian Palace with costumes, props, and matte paintings on all of the walls to look like a movie set from the Universal Film 'The Mummy'. The third is a Space and Futuristic month. We will have a laser light show with dancers in elaborate costumes, glow in the dark matt paintings."

The layout of the Theme Bar places the DJ on a 10-foot high platform located between the lounge and the main dance area. The platform will also function as a lookout area for one of the security guards.

There will be a cover charge to enter the Theme Bar. The nightclub will operate with an On-sale General License for all alcoholic beverages and be limited to customers over 21 years of age. The proposed hours of operation are 9:00 pm until 2:00 am Thursdays through Sundays.

The applicant is also proposing to open the facility to outside groups for special events and meetings Monday through Friday, 8:00 am to 6:00 pm. The maximum attendance at these weekday events is anticipated to be fewer than 200 persons.

No exterior improvements are proposed, except for improvements required by local, state, and federal building and fire code requirements as well as any necessary safety improvements required by the City.

**Project Analysis:** The City Council indicated its intention in allowing only two nightclubs in the Commercial Industrial Overlay with the adoption of Zoning Text Amendment PLN2002-00317. With the Saddle Rack nightclub approved approximately seven months earlier, the Theme Bar nightclub is considered by staff as the second nightclub conditionally allowed in the City's Commercial Industrial Overlay. What follows are specific findings that are identified by staff in accordance with recently adopted Zoning Text Amendment and an analysis of the use based upon plans and evidence provided by the applicant.

#### **Specific Findings For Nightclub in Commercial Industrial Overlay**

Staff has determined that the proposed project meets specific criteria in addition to general criteria established by the City Council for allowing a second nightclub within the Commercial Industrial Overlay based on the reasons indicated below (general findings, in addition to the ones listed below, are included in Exhibit "B").

First, the proposed project is oriented towards a regional market. As indicated by the applicant, the Theme Bar attempts to provide an entertainment facility capable of providing nightclub entertainment to persons 21 years and older. The size, scale and design of the Theme Bar are expected to regionally attract a maximum number of 1,600 patrons per weekend night (building codes will ultimately dictate occupancy allowance). The Theme Bar proposes "to bring more of a visual aspect back to disco type clubbing". Bars located inside the facility will change themes based on type of music for the theme of the month. Although the Theme Bar may attract some patrons attending the Saddle Rack, the Theme Bar proposes an entirely different genre (disco/house music) and entertainment venue that is appropriate for the bay area's regional market (see Info 1 for applicant's proposed operation).

Second, the proposed project site has convenient access from a freeway, Interstate 880. The site is located near the intersection of Albrae Street and Stevenson Boulevard, 1,000 feet from on-ramp access to Interstate 880.

Third, the proposed project use is compatible with existing uses located in the immediate area and general vicinity. The Theme Bar nightclub will be adjacent to retail furniture stores, Bay Billiards (a pool hall), Demaray's Gymnastics, SAF Keep storage. Except for Bay Billiards, which is open until 4:00 a.m. in the morning (extended hours recently approved by Planning Commission), other uses onsite generally do not remain open later than 9:00 p.m. The storage facility manager for SAF Keep storage (directly adjacent to project site, 40543 Albrae Street) indicated to staff that access given to customers only is provided from 7 a.m. to 8 p.m., Monday through Friday, and from 7:00 a.m. to 9 p.m. on Saturday. These hours of operation do not coincide with the general weekend nightclub hours proposed. The storage facility manager has no concerns related to the proposed nightclub use. The applicant is willing to work with storage facility, or any adjacent, present or future tenant, if its customer access policies change (Condition 29).

Lastly, the proposed project will not impede future industrial development. Currently, the site is developed and provides retail and entertainment/recreational services. Although City Council approved a Major Amendment to Planned District P-90-18 for the site's redevelopment to construct 69,250 square feet of retail space, 24,440 square feet of warehouse space and 32,000 square feet of industrial office space, staff believes that the amount of new retail space, if built, will sufficiently accommodate the use. As a result, no future industrial office space will be displaced onsite.

### **Proposed Nightclub Operation**

Staff finds that the Theme Bar nightclub is suitable for the proposed project site in that the site is sufficiently located away from residential developments (nearest residential development in Newark is 1200 feet away as measured from applicant's tenant space). The applicant is willing to work with staff to incorporate improvements necessary to provide safety for patrons and nightclub staff. Staff conducted site visits of the proposed project site to evaluate its existing condition and surroundings. At the site visits, representatives from the Fire Department, Police Department, Building Department and Planning Division provided the applicant with general conditions based on those site visits that must be met before the nightclub is allowed to operate. Staff included all required improvements for the proposed use in Exhibit "B" (Findings and Conditions of Approval). The Fremont Police and Fire Departments' primary concerns mainly are related to crowd control, lines outside of the establishment, and adequate exiting of the facility in the case of an emergency (meeting disabled access requirements). Conditions are included to reflect these concerns.

Additionally, conditions are incorporated to address the use's prohibitions. Only performers and nightclub staff will be allowed on the performance stage. The performance stage is not designed with a guardrail and therefore will not be in compliance with building code requirements if used as a platform by patrons for dancing. Staff also has concerns regarding the potential for large numbers of patrons and the associated crowd control issues. For private parties (proposed during Monday through Friday, 8:00 am to 6:00 pm) that involve no more than 200 persons, staff is less concerned in that private parties generally involve a more controlled group by nature of a private party. However, the main nightclub weekend hours (from 9 p.m. to 2 a.m., Thursday through Sunday) when the occupancy may reach up to 1,600 patrons (applicant's proposed figure) can become an enforcement problem if the facility's private security fails to provide crowd control. Staff has included conditions of approval requiring a minimum of 18 security guards onsite one-half hour prior to opening and 1 hour after the nightclub closes on the main weekend nights. No security guards will be required for private party events of less than 200 persons during the weekday hours from 8:00 a.m. to 6:00 p.m., Monday through Friday, unless the applicant is notified by the Police Department that private security is required for such events for reason of public safety and necessity.

Limits to occupancy will be based on building and fire code requirements. Conditions are included to ensure that the facility does not exceed its maximum occupancy and will limit the potential impacts of crowds. Condition 15 prohibits the applicant from leasing or renting the space or a portion of the establishment to an outside promoter and prohibits the applicant from advertising or using a different name for the establishment for the entertainment portion of the nightclub. Condition 8 is included to prohibit lines from being formed outside the nightclub with the number of patrons waiting outside is in excess of the maximum occupancy allowed inside the facility. The applicant is also prohibited from rearranging or removing seats or tables to increase occupancy of the space (Condition 25).

The applicant worked with staff to provide safety for patrons and nightclub staff, and is willing to cooperate and implement additional security and safety measures on an ongoing basis. The proposed project provides an entertainment facility that represents an opportunity for an additional late night entertainment use in the Commercial Industrial Overlay.

**General Plan Conformance:** The site is designated General Industrial with Commercial Industrial Overlay. The proposed project is consistent with the existing General Plan land use designation because nightclubs are permissible uses; subject to conditional use permit approval, or a planned district amendment in the case of the subject property. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

#### **Fundamental Goal F-8**

**A diversity of residential, recreational, cultural, employment and shopping opportunities.**

**Policy LU 3.3:** Commercial uses providing necessary services for industrial uses and workers and large-scale regional retail and amusement uses may be allowed in industrially designated areas, with the exception of "Light Industrial". All commercial uses are subject to discretionary review to ensure the use can be served by the existing or planned roadway infrastructure and would not have a significant adverse impact on existing industrial uses in regards to parking requirements, traffic volume and other conflicts in operations. Appropriate non-industrial uses include large-scale regionally oriented retail and amusement uses as well as uses serving industry and employees,

such as copying services, branch banks, eating and drinking establishments, convenience shopping and gas stations.

The proposed project is in conformance with the above goal and policy because the proposed use can be served by the existing or planned roadway infrastructure and would not have a significant adverse impact on existing industrial or retail uses in the surrounding area in regards to parking requirements, traffic volume and other conflicts in operations. The only tenant in the surrounding development that will be open during the hours of operation of the Theme Bar is Bay Billiards, which recently received approval from the City to remain open until 4:00 am.

The project conforms to the criteria of zoning text amendment (PLN2002-00317) that requires the use to be oriented to the regional market and have convenient access from a freeway. The Theme Bar, according to the applicant, will be marketing to customers from the South Bay and the East Bay, not just Fremont. Access to the project site is off both Stevenson Boulevard and Albrae Street, which are in proximity to I-880 Freeway via the Stevenson Boulevard interchange, thereby allowing easy access to and from the facility.

**Zoning:** The project site is zoned P-90-18 Planned District. Section 8-21603.(j) of the Fremont Municipal Code allows a total of two nightclubs or dance clubs, subject to Conditional Use Permit. The proposed use is the second application for a nightclub or dance club under the recently revised ordinance. The City of Fremont defines nightclub as follows:

Sec. 8-2167 "Nightclub" shall mean a drinking place which includes an area in which patrons may dance, or which provides live entertainment not including entertainment by a single musician."

The proposed facility meets the definition of nightclub. Nightclubs, like any use involving large numbers of people, have the potential to create noise, traffic, and parking issues. Other cities have found nightclubs a compatible use in industrial areas. Industrial areas tend to have less traffic congestion at night. There are fewer neighbors that might be disturbed by sound from the facility. Noise at closing from people leaving the site is sometimes a problem in commercial areas near residences. The proposed site is distant from residential uses. The Planned District Major Amendment to allow one nightclub within this planned district as a conditionally permitted use will allow for appropriate conditions to ensure the use does not become a nuisance. Staff has included several conditions regarding operations, noise and security that are standard for similar uses.

**Parking:** The project site contains two major parking areas that will provide the necessary parking for the Theme Bar. The main parking lot off Albrae Street, in front of Furniture Depot contains 543 spaces, which are available to the applicant. There are also 50 additional parking spaces, located in the parking aisle closest to Bay Billiards (Bay Billiards is required to provide 50 parking spaces; 2 per each pool table).

There is an additional parking area on the south side of the Furniture Depot building. This area has approximately 40 spaces, plus an additional 121 spaces, which are fenced off from the rest of the area. This parking area is only proposed to be used for employee parking, as the only access is from the driveway that runs in front of the Theme Bar. The applicant proposes to close the driveway alley that runs between the building where the tenant space is located and the Furniture Depot building when the Theme Bar is operating as a nightclub. The driveway will be closed by either traffic cones or removable bollards, to prevent vehicles from driving in front of the Theme Bar when it is operating. The only use located on this driveway, beyond the Theme Bar, is SAF Keep Storage which has operating hours from 7 a.m. to 8 p.m., Monday through Friday, and from 7:00 a.m. to 9 p.m. on Saturday. Therefore, no major conflict is anticipated by the closing of the driveway while the Theme Bar is operating.

The Theme Bar contains approximately 11,300 square feet of space devoted to club functions and 5,300 square feet used for offices, storage and restrooms. The parking required for the Theme Bar, based on the mix of areas within the club will require a total of 395 parking spaces. Parking Ordinance requires 1 space per 30 square feet for drinking places and nightclubs. Based on the requirements that were established for the Saddle Rack Bar, support areas were calculated at 1 space per 300 square feet, the standard for commercial and industrial development. Staff has determined the parking requirements as follows:

Nightclub space/11,300 sq. ft./30 = 377 spaces

$$\text{Support areas/5,300 sq. ft./300} = \frac{18 \text{ spaces}}{395 \text{ spaces}}$$

The 543 spaces in the existing parking lot to the north of the Furniture Depot building are in excess of the required number of spaces for the Theme Bar. As stated above, there are also an additional 161 spaces in the lot to the south of the Furniture Depot building that will be available for employee parking.

**Security:** The applicant has included with its application a security plan for the Theme Bar. The applicant has secured the services of Adams Security Consultants, Inc. to provide security for the facility (Info 2). Adams Security Consultants, Inc. is owned and operated by two active San Francisco police officers. The representatives of Adams Security Consultants, Inc. and the applicant have met with and discussed the proposed Theme Bar with the Fremont Police Department. Based on these discussions, there will be eighteen security staff on duty at all times that the Theme Bar is operating as a nightclub (Condition 9). Security personnel will be stationed inside the Theme Bar, outside at the entrance, and in the parking lot. The applicant will be required to designate a security personnel station inside the facility, subject to the review and approval of the Police Department.

The applicant is proposing to install video monitors outside the Theme Bar, for viewing by waiting patrons that will provide information regarding the facilities lack of tolerance for drugs and weapons. The security staff will do searches of all customers for weapons, drugs and paraphernalia. According to the information provided by Adams Security Consultants, Inc., the security staff will use handheld metal detectors and handheld identification checkers to screen customers prior to entering the nightclub.

**Architecture:** The existing building is a metal structure that was originally built as a truck manufacturing facility. The building has been renovated to provide storefront facades. The applicant is not proposing to modify the existing exterior of the structure, other than to add additional exit doors to the front façade of the tenant space and minor improvements necessary to meet building and fire code requirements.

**Landscaping:** No changes are being proposed for the property, other than the addition of the freestanding landscape planters near the entrance to the Theme Bar.

**Circulation/Access Analysis:** Access to the project site is from Albrae Street and Stevenson Boulevard. The site has two driveways that provide access into the main parking area off Albrae Street. There is also one driveway, which leads to the major parking area from Stevenson Boulevard. Access on Stevenson Boulevard will be limited to right-turn in and out only, as there is an existing landscaped median in Stevenson Boulevard.

**Development Impact Fees:** This project may be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, capital facilities and traffic impact. These fees shall be calculated at the fee rates in effect at the time of building permit issuance. The City is currently reviewing the impact fee history of this tenant space. The Impact Fee Administrator (Assistant City Manager) will render a decision prior to issuance of a building permit.

**Waste Management:** This project involves a nightclub use that is subject to the provisions of the California Integrated Waste Management Act of 1989 (AB939). The Act requires that 50% of the waste generated in the City of Fremont be diverted from landfill sites by the year 2000. Additionally, the project is subject to the City's Source Reduction and Recycling Element (1992), an Integrated Waste Management Ordinance (1995), and a Commercial/Industrial Recycling Plan (1997). These documents require that any new project for which a building permit application is submitted to include adequate, accessible, and convenient areas for collecting and loading trash and recyclable materials. Trash and recycling receptacles shall be easily accessible by nightclub personnel.

**Environmental Analysis:** This project is categorically exempt from California Environmental Quality Act per Section 15332, In-Fill Development Projects, of CEQA Guidelines.

**Response from Agencies and Organizations:** None

**Enclosures:** Exhibit "A" (Site plan, elevations, and floor plan)

Info 1 (Applicant's Business Operation Statement)  
Info 2 (Applicant's Security Plan)

**Exhibits:** Exhibit "A" (Site plan, elevations, and floor plan)  
Exhibit "B" (Findings and Conditions of Approval)

**Informational:** Info 1 (Applicant's Business Operation Statement)  
Info 2 (Applicant's Security Plan)

**Recommended Actions:**

1. Hold public hearing.
2. Find PLN2003-00271 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report.
3. Find PLN2003-00271 is categorically exempt from CEQA per Section 15332, In-Fill Development Projects.
4. Recommend to City Council PLN2003-00271, as shown on staff annotated Exhibit "A", subject to Findings and Conditions of Approval contained in Exhibit "B".

**EXHIBIT "B"**  
**THEME BAR at 40539 Albrae Street**  
**PLN 2003-00271**  
**Planned District Major Amendment (Use Permit)**

**Findings**

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated June 26, 2003 incorporated hereby.

***Specific Findings for Nightclub in the Commercial Industrial Overlay:***

1. The proposed project is oriented towards a regional market. As indicated by the applicant, the Theme Bar attempts to provide an entertainment facility capable of providing nightclub entertainment to persons 21 years and older. The size, scale and design of the Theme Bar are expected to regionally attract a maximum number of 1,600 patrons per weekend night (building codes will ultimately dictate occupancy allowance). Theme Bar proposes "to bring more of a visual aspect back to disco type clubbing". Bars located inside the facility will change themes based on type of music entertained for the theme of the month.
2. The proposed project site has convenient access from a freeway, Interstate 880. The site is located near the intersection of Albrae Street and Stevenson Boulevard, 1,000 feet from on-ramp access to Interstate 880.
3. The proposed project use is compatible with existing uses located in the immediate area and general vicinity. The Theme Bar nightclub will be adjacent to retail furniture stores, Bay Billiards (a pool hall), Demaray's Gymnastics, SAF Keep storage. Except for Bay Billiards, which is open until 4:00 a.m. in the morning (extended hours recently approved by Planning Commission), other uses onsite generally do not remain open later than 9:00 p.m. The storage facility manager for SAF Keep storage (directly adjacent to project site, 40543 Albrae Street) indicated to staff that access given to customers only are provided from 7 a.m. to 8 p.m., Monday through Friday, and from 7:00 a.m. to 9 p.m. on Saturday. These hours of operation do not coincide with the general weekend nightclub hours proposed. The storage facility manager has no concerns related to the proposed nightclub use. The applicant is willing to work with storage facility, or any adjacent, present or future tenant, if its customer access policies change.
4. The proposed project will not impede future industrial development. Currently, the site is developed and provides retail and entertainment/recreational services. Although City Council approved a Major Amendment to Planned District P-90-18 for the site's redevelopment to construct 69,250 square feet of retail space, 24,440 square feet of warehouse space and 32,000 square feet of industrial office space, staff believes that the amount of new retail space, if built, will sufficiently accommodate the use. As a result, no future industrial office space will be displaced onsite.

***General Findings:***

5. The proposed use is consistent with the General Plan designation for the site, since the land use, a night club is conditionally permitted on property designated General Industrial on the General Plan. The use is oriented to the regional market and convenient access from freeways is available. The proposed use is compatible with existing industrial uses and would not impede future industrial development.
6. The site is suitable and adequate for the proposed use because the proposed design and operation conforms to ordinance requirements for the zoning district and is subject to conditions of approval that will ensure the use does not have an adverse impact on the site.
7. The proposed use would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or other public



facilities or services. Sufficient parking is provided, points of ingress-egress are properly located, and adequate fire fighting equipment access and facilities are available.

8. The proposed use would not have a substantial adverse economic effect on nearby uses because the building is an existing building and the use is subject to conditions of approval.
9. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large because the facility is properly regulated with adequate parking, and is designed to limit impacts on surrounding occupants.
10. The design of the project is compatible with existing and proposed development within the district and its surroundings because the proposed project only will require minor improvements to the project structure and site to meet fire and building code requirements.
11. All public improvements or facilities required as part of this approval are directly attributable to the proposed use, and are required for reasons related to public health, safety and welfare.

**General Conditions (Must be satisfied on ongoing basis)**

1. Approval of PLN 2003-00271 for a nightclub facility shall conform to Exhibit "A" (Site Plan, Elevations, Floor Plans) and only applies to the 16,600 square foot tenant space denoted on the site and floor plan. The proposed floor plan for the nightclub shall substantially conform to the plans submitted for this application, except as modified herein.
2. Minor modifications to the planned district major amendment consistent with Title IV, Chapter 7 of the Fremont Municipal Code may be made subject to review and approval of the Planning Director if such modifications are in keeping with the intent of the original approval.
3. If the Planning Director finds evidence that conditions of approval have not been fulfilled or that the use or uses has or have resulted in a substantial adverse effect on the health, and/or general welfare of users of adjacent or proximate property, or have a substantial adverse impact on public facilities or services, the Planning Director may refer the planned district major amendment to the Planning Commission for review. If, upon such review, the Commission finds that any of the results above have occurred, the Planning Commission shall recommend the City Council modify or revoke the approval of the use.
4. The applicant shall be responsible for all personnel costs and incidental expenses required to enforce these special conditions and/or mitigate violations of these conditions. Personnel costs and incidental expenses shall include, but are not limited to Fire and Police personnel, other City personnel and consultant costs, inspection and re-inspection fees, costs incurred in preparation of notices, preparation of specifications and contracts required to abate any nuisance arising from violation of these special conditions, and attorneys fees and costs incurred in enforcing these special conditions. The applicant is responsible for all extraordinary Police services directly related to the operation of the nightclub.
5. The hours of operation for the Theme Bar are from 9:00 p.m. to 2:00 a.m., Thursday through Sunday. The use of the facility for private daytime functions shall be from 8:00 a.m. to 6:00 p.m., Monday through Friday, and shall be limited to no greater than 200 persons.
6. The use at the facility shall not engage and/or render any services as defined in Chapter 10 of the Fremont Municipal Code relating to "Adult Oriented Businesses", unless a valid "Adult-Oriented Business Permit" is obtained and an approval of a Major Amendment to this Planned District is approved by City Council.

7. All patrons entering the facility and employees of the nightclub must be 21 years of age or older. All patrons entering the facility must provide picture identification before entering the facility to ensure that those patrons are adhering to the facility's regulations.
8. The number of patrons waiting in lines outside of the nightclub facility shall not be in excess of the maximum occupancy allowed in the facility. The applicant must maintain designated accessible areas where patrons may line up, clear and free from obstructing adjacent tenant spaces (present and future).
9. Private, licensed security guards shall be provided as follows for the nightclub use: a minimum of 18 security guards for main nightclub weekend days from 8:30 p.m. to 3:00 a.m. (one-half hour before opening and one hour after closing), Thursday through Sunday. No security guards are required for private party events of less than 200 persons during the weekday hours from 8:00 a.m. to 6:00 p.m., Monday through Friday, unless the applicant is notified by the Police Department that private security is required for such events for public safety and necessity.
10. The security guards must be licensed through the State of California and must comply with Sections 5-5100 -5-5108 of the Fremont Municipal Code. Ultimately, the responsibility is upon the applicant/operator of the facility to provide adequate security at the facility by retaining a sufficient number of security guards during all hours of operation. Such security guard shall be charged with preventing violations of law and enforcing compliance by patrons of the stated prohibitions for the facility and ensuring that all patrons have left the premises within 30 minutes after the facility's closure. The Security guard shall be uniformed in a manner distinct in color, style, design and appearance from a city police department or city uniform so as to be readily identifiable as a private security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of state law. No security guard is permitted to act as a door person, admittance person, or sole occupant of the manager's station while acting as a security guard. Additionally, the security guard may not engage in any entertainment activity provided at the facility or any other services within the premises while on duty.
11. A main security guard station must be located within the facility. A supervising security guard must be present at the station at all times. The applicant/operator of the facility must identify to the Police Department the location of the station if a change to the floor plan is made.
12. The property owner is responsible for litter control and for sweeping of all paved surfaces. Sidewalks, parking lots, and other paved areas must be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged to the storm drain.
13. The business operator may provide a variety of entertainment including music concerts, live music and performances as defined by Section 8-2167 of the Fremont Municipal Code ["Nightclub"].
14. The number of persons located within the nightclub facility may not exceed the maximum occupancy number allowed by the California Building Code. The maximum occupancy number shall be issued by the City's Building Official upon approval of building permit for the nightclub.
15. The applicant shall not lease or rent the tenant space or a portion of the establishment to an outside promoter and shall not advertise or use a different name for the establishment for the entertainment portion of the nightclub.
16. All activities shall take place in the interior of the building and no amplification of music or voice is allowed outside, other than the video monitors near the entrance used to inform patrons of the facility's prohibitions and that each individual entering the facility will be searched for inappropriate possession. Sound as measured at the property line may not exceed a noise performance standard of 70 db(A).
17. Alcoholic beverages (all types) may be served subject to State of California licensing (Alcoholic Beverage Control) requirements. No alcoholic beverages may be served past 1:30 a.m. No alcoholic beverages may be served or consumed outside of the nightclub facility.

18. The applicant shall maintain signs stating “ No loitering or consumption of alcoholic beverages” on the exterior of the building and within all parking areas.
19. The applicant shall maintain a total of 395 parking spaces for the nightclub use.
20. Surveillance equipment must be maintained within all corridors, main facility floors, office areas, VIP rooms, and exterior locations of the project structure. The recorded surveillance tapes shall be kept for a period of no less than one month or 30 working days.
21. Security and safety lighting will be conforming to the City Security Ordinance and regulations.
22. The project structure and required exiting for egress must comply with all local, state and federal building and fire code requirements.
23. The project structure shall have an automatic fire extinguishing system subject to the review and approval of the Fremont Fire Marshall through the Development Organization review process.
24. Restrooms shall remain operational and available to patrons during all hours of operation. In addition, a minimum of two drinking water fountains located near the restrooms will remain operable at all times during all hour of operation.
25. The applicant shall not rearrange or remove seats or tables approved under this amendment (use permit) to increase occupancy of the space.
26. The applicant shall be required to recycle all glass and plastic containers generated by the nightclub facility.
27. All conditions applicable to patrons, particularly the stated prohibitions included in these “Conditions of Approval”, of the facility incorporated herein shall be conspicuously maintained in the front lobby area in a sign at the entrance with lettering of at least two (2) inches in size.
28. The alley area (driveway) located between the nightclub facility and adjacent building to its east (Furniture Depot) must be blocked off with temporary traffic cones and/or removable bollards to prevent vehicles of patrons from accessing the rear (south) parking lot area in the back.
29. The applicant shall work with present and future adjacent tenants to ensure that the operation of the nightclub facility does not impede the ability of adjacent tenants conducting business during conflicting business hours.
30. The operation of the nightclub facility shall comply with all Alcoholic Beverage Control (ABC) requirements.
31. The applicant or successor in interest shall conform to the conditions of approval herein and all other applicable ordinances of the Fremont Municipal Code.
32. Should additional security measures be needed in order to address any public safety concerns arising from the business, the applicant shall provide those additional security measures as requested by the City’s Police Department and/or Planning Director.
33. This report and its conditions as well as the Planned District Major Amendment [Use Permit] issued after successful compliance with Conditions indicated below shall be kept on the premises and made available to any officer/employee of the City upon request.

**Prior to Issuance of a Planned District Major Amendment [Use Permit] by the Planning Director to allow the operation of the theme bar (nightclub) the following conditions must be satisfied.**

***Planning Division Requirements:***

34. Applicant shall submit appropriate plans and documents to City's Plans and Permits Section for review to insure conformance with relevant codes, policies and other requirements of the Fremont Municipal Code.
35. The area above the existing "tot" restrooms must be secured with a durable enclosure to prevent access by patrons.
36. The cyclone fencing located at the rear of the building must be replaced with a new cyclone fence 8 feet in height to prevent persons from entering the area at the rear of the building. A pedestrian gate is required for egress by the public, such gate shall be indiscriminately operable from the interior without any special knowledge, key or device.
37. All exposed boiler/water heater piping in the women's future lounge room must be appropriately enclosed.
38. All conditions applicable to patrons, particularly the stated prohibitions included in these "Conditions of Approval", of the facility incorporated herein shall be conspicuously posted in the front lobby area in a sign at the entrance with lettering of at least two (2) inches in size.
39. The site circulation and parking shall be reviewed for conformance with Title VIII, Chapter 2, Article 20, of the Fremont Municipal Code during Development Organization.
40. A final inspection of the nightclub facility and its required improvements will be conducted by Planning, Fire and Police Department staff prior to issuance of use permit. No permit will be issued by the Planning Director unless all conditions contained herein are satisfied.

***Environmental Services Department Requirements:***

41. All public and private storm drain inlets are to be stenciled "No Dumping – Drains to Bay" using stencils purchased from the Alameda County Urban Runoff Clean Water Program at 951 Turner Court, Hayward, California. Color and type of paint to be as approved by the City Engineer.

***Building Department Requirements:***

42. All improvements to the project structure and site necessary for compliance with local, state and federal building and fire code requirements as well as any improvements required by the City in order to address public safety must be satisfied prior release of building occupancy for this use.

***Fire Department Requirements:***

43. An Emergency and Crowd Control Plan must be submitted to and approved by both the City's Police and Fire Departments during the building permit review process of the project.
44. All occupancy separation walls must extend to the ceiling deck. Fire safety material and caulking will be required at the tops of the existing walls which currently do not meet occupancy separation requirements.
45. Openings into the adjoining aerobics area must be closed off to maintain separation.

46. The applicant shall meet all requirements in the 2001 California Fire Code and all local mandated fire code requirements adopted by City Council under Ordinance 2485, which include, but are not limited to, the below:
- The applicant shall install an evacuation/protected fire alarm system with voice evacuation with over ride interlocks to all music or other noise producing appliances /devices.
  - The applicant shall upgrade existing fire sprinkler and alarm system to meet that of at least A2.1 occupancy requirements.
  - The applicant shall provide proposed occupancy class.
  - The applicant shall provide either certification that the fire sprinkler system has a California Title 19, 5-year certification or obtain one prior to opening.
  - The applicant shall notify the Fire Department for special events inspection of theme changes, as wall coverings, decorations, curtains will change the fire load rating of the building. The applicant shall apply for special event inspections at the Development and Environmental Services Department. Approval of the appurtenances used will be subject to the City's Building and Fire Departments before reopening of each new theme. Fees will be charged for each inspection.
  - A lighting plan for the illumination of the buildings, walkways, driveways and parking areas shall be submitted to the City's Plans and Permits Section. The type of low intensity, non-glare lighting fixtures, their heights, intensity and direction shall be clearly indicated. The parking lot is to be well lit, at least one foot candle, during hours of darkness up until one hour past closing time. In addition, the applicant shall provide emergency exit path lighting.
47. The applicant shall install an automatic fire sprinkler system in the building for fire protection purposes. Water flow and control valves must be monitored by a central alarm monitoring system and Central Station. The monitoring system shall have a smoke detector placed over the fire panel, a pull station, and an audible device located in a normally occupied location.
48. Plan, specifications, equipment lists and calculations for the required sprinkler system must be submitted to the Fremont Fire Department Authority and Building Department for review and approval prior to installation. A separate plan review fee is required. Standard Required: N.F.P.A. 13
49. All Automatic Fire Suppression Systems Fire Department Connections shall have the following installed/provided
- a. Address placard installed at the connection.
  - b. Knox Cap installed on every inlet.
50. The applicant shall have a key box (Knox brand) located outside of building/gate and provide keys to the Fire Department so they may gain access, particularly at the cyclone fence located at the rear of the nightclub facility. Vehicle gates may use Knox lock or keyed over-ride switch. Gate shall also have an infrared receiver installed. Application can be obtained at Fire Administration office, 3300 Capital Ave, Fremont.
51. The applicant shall install Fire alarm system as required. The system must be monitored. The system must be N.F.P.A. 72 compliant and have an interior audible device per the C.F.C. Upon completion a "UL" serial numbered certificate shall be provided at no cost to the City of Fremont Fire and Life Safety Inspector. Fire alarm systems devices shall be addressable and report to the Central Monitoring Station addressable).
52. A driveway access serving the nightclub facility shall have a minimum 20 foot unobstructed width driveway/access road. The access road must provide all portions of the first floor with the required 150 feet access to the rear of the building. These driveways/access roads shall be designated as Fire Lanes. Driveway /access roads and

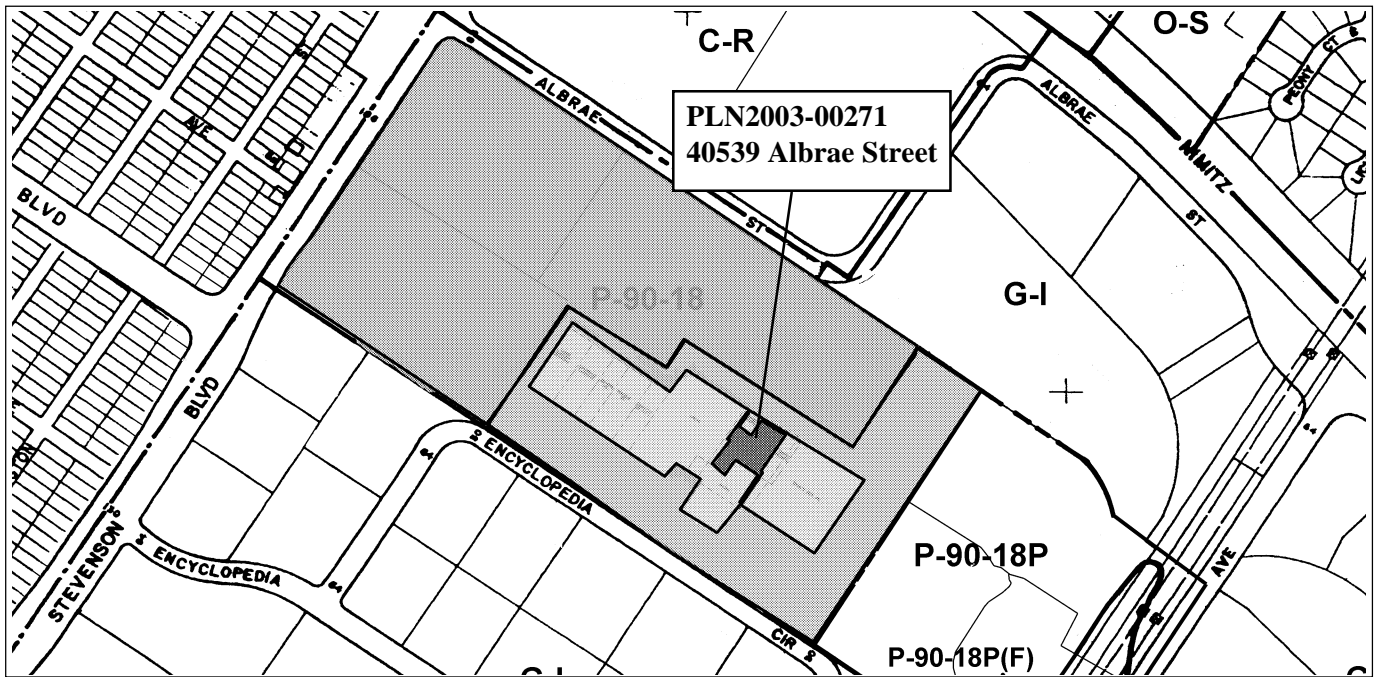
shall meet Fire Department standards for distance, weight loads, turn radius, grades, and vertical clearance. Approved turnarounds shall be required for distances over 150 feet from public streets. Other mitigations may be required in addition to those listed. (CFC Sec. 902.2 as amended)

53. Gates across Fire Department access roads shall have a minimum 15-foot clear, unobstructed linear width and a clear vertical height of 13 feet 6 inches. All locking devices shall provide for Fire Department emergency access with Knox box, lock or over-ride switch. (CFC 2000, Sec. 902.2.4 & 902.2.1.)

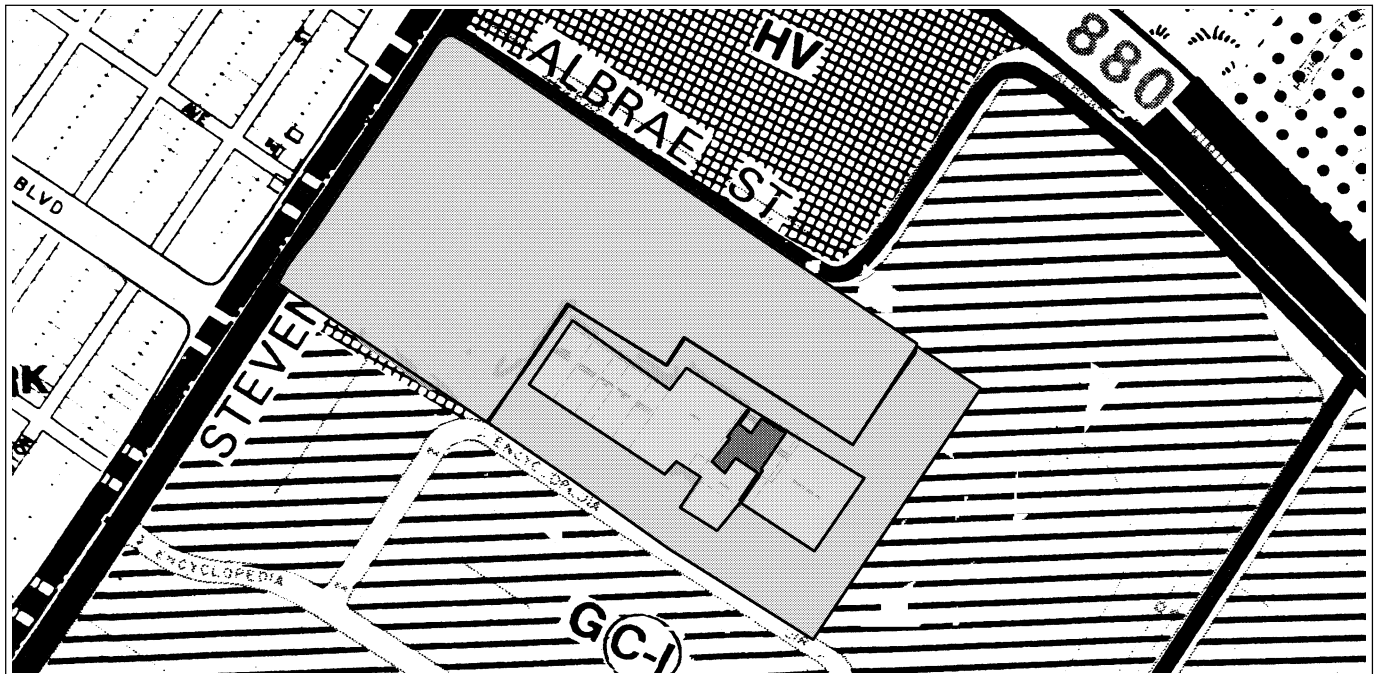
#### ***Police Department Requirements***

54. An exterior lighting plan for the exterior entry and applicable parking area, including specifications of existing or proposed fixtures, shall be submitted to and approved by the City's Plans and Permits Section prior to the issuance of a building permit. The parking lot is to be well lit, at least one foot candle, during hours of darkness up until one hour past closing time.
55. The applicant shall work with the Police Department to install surveillance equipment within the project structure and its exterior adjacent areas where affected. Surveillance equipment must be installed within all corridors, main facility floors, office areas, VIP rooms, and exterior locations of the project structure. Surveillance monitors will be located at specified locations and will be monitored by the adult manager at the site. The Police Department shall approve the proposed surveillance equipment prior to the issuance of a business license and approval of the use permit.
56. Plans submitted to the City's Plans and Permits Section must indicate a main security guard station within the facility.
57. The applicant must clearly designate on plans accessible areas where patrons may line up, clear and free from obstructing adjacent tenant spaces (present and future).
58. The parking lot shall be posted with signs stating "No loitering or consumption of alcoholic beverages". Such signs shall be purchased from the City's Revenue Division at the Development and Environmental Services Department (cashier's window) at 39550 Liberty Street and shall be conspicuously posted in locations approved by the City's Police Department.
59. The applicant will be required to provide proof to the Planning Director prior to building permit issuance that a qualified private security firm has been retained and is adequate in satisfying the security measures identified herein under "General Conditions".

# INFORMATIONAL



Existing Zoning

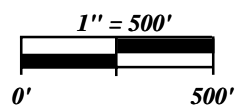


Existing General Plan

**Project Number:** PLN2003-00271 (PD Major Amendment)  
**Project Name:** Nightclub - Albrae Street  
**Project Description:** To consider a Planned District Major Amendment to permit the operation of a 16,000 square foot nightclub located in the Industrial Planning Area. This project is categorically exempt from CEQA review under Section 15332, In-Fill Development Projects.



**Note:** Prior arrangements for access are not required for this site.



# EXHIBIT “B”

Attached to and made a part of

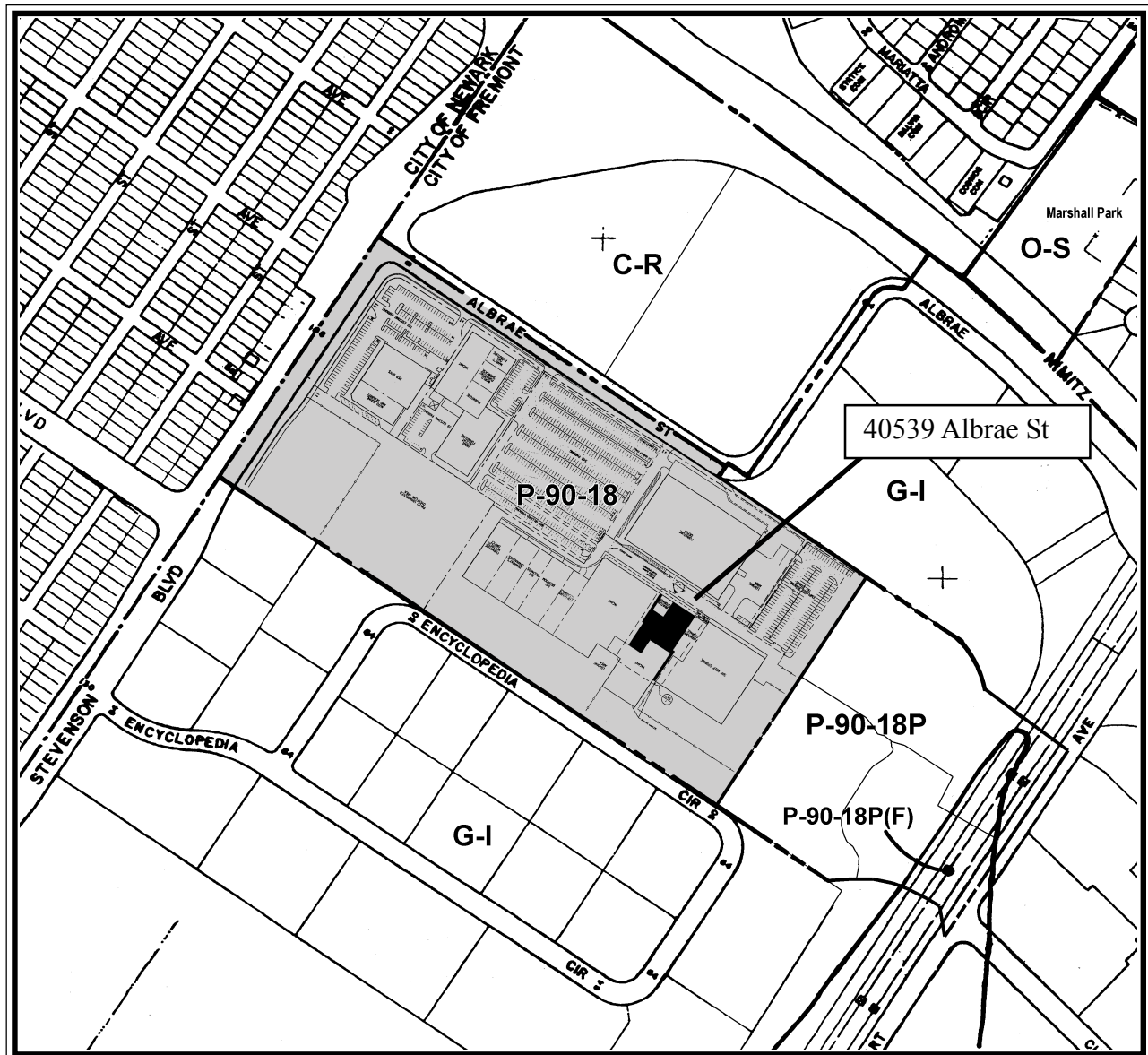
**Ordinance No.** \_\_\_\_\_

adopted by the City Council of the City of Fremont, California

**On the** \_\_\_\_\_ **day of** \_\_\_\_\_, **20**03**.**

## ZONING MAP (SECTION)

AFFECTS ZONING MAP(S) FOR THE INDUSTRIAL PLANNING AREA



From: P-90-18

To: P-90-18

[pc on 06-26-00] 66-372

Project Name: Theme Bar Nightclub

Project Number: PLN2003-00271 (PD Major Amend)

